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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO.                   |
|--|-------------|----------------------|---------------------|------------------------------------|
| 10/646,891   | 08/25/2003  | Yukio Hosaka         | 241903US0           | 1243                               |
| 22850  | 7590        | 09/06/2006           |                     |                                    |
| C. IRVIN MCCLELLAND<br>OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.<br>1940 DUKE STREET<br>ALEXANDRIA, VA 22314 |             |                      |                     | EXAMINER<br>WOODWARD, ANA LUCRECIA |
|  |             |                      |                     | ART UNIT<br>1711 PAPER NUMBER      |

DATE MAILED: 09/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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|                              |                        |                     |
|------------------------------|------------------------|---------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|                              | 10/646,891             | HOSAKA ET AL.       |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |
|                              | Ana L. Woodward        | 1711                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on July 31, 2006
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 11, 14, 27-29 and 33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 11, 14, 27-29 and 33 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. Claims 14, 27, 29 and 33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 14, lines 2-7, the language “a composition comprising a composition .....polymer composition” is awkward and confusing. For example, it is unclear as to whether the language “consisting essentially of a cross-linkable water-insoluble polymer and a polyolefinic....that is uncrosslinked or crosslinked.....and water-soluble particles” is defining the antecedently recited “crosslinkable polymer composition”(lines 2-3) or the antecedently recited “a water-insoluble matrix” (line 3).

In claim 14, line 5, “doest” is queried.

In claim 27, it is unclear as to how the recited 30-70% content relates to the embodiment comprising *crosslinked* polyolefinic resin. In this regard, it is noted that said language refers to “the polyolefinic resin that is *uncrosslinked*”.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 11, 14, 27-29 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 6,645,264 (Hasegawa et al) as per reasons of record.

Hasegawa et al disclose a composition comprising A) a crosslinkable elastomer having no functional groups, embracing the ethylene vinyl acetate copolymer and polyolefinic components of the presently claimed water-insoluble matrix, B) a water-insoluble substance having functional groups, not precluded from the present claims, and C) a water-soluble particulate substance, reading on the presently claimed water-soluble particles. In one embodiment of the reference, the crosslinkable elastomer A) comprises the matrix phase and the water-insoluble substance B) comprises the dispersed phase, i.e., **B) component does not form part of the matrix** (column 5, lines 58-61). Suitable crosslinkable elastomers include ethylene vinyl acetate copolymer, reading on the presently claimed ethylene vinyl acetate copolymer, as well as polymers reading on the presently claimed polyolefinic resin, such as butadiene rubber, isoprene rubber, acrylonitrile-butadiene rubber, styrene-butadiene rubber, styrene-isoprene rubber, ethylene-propylene rubber, acrylic rubber, ethylene-ethyl acrylate copolymer, ionomer (column 3, lines 11-19). It is within the scope of the reference to use these crosslinkable elastomers in combination of two or more.

The disclosure of the reference differs in essence from the present claims in not expressly exemplifying a matrix component A) comprising the combination of an ethylene vinyl acetate copolymer and an olefinically unsaturated monomer-based polymer. It is maintained that it would have been obvious to one having ordinary skill in the art to use a combination of an ethylene vinyl acetate copolymer and an olefinically unsaturated monomer-based polymer as the matrix component A) for their expected additive effect. This is because the reference clearly teaches that combinations of crosslinkable elastomers can be satisfactorily used. It is *prima facie* obvious to combine two materials each of which is taught by the prior art to be useful for the

same purpose in order to form a third composition which is to be used for the very same purpose. The idea of combining them flows logically from their having been individually taught in the prior art. Accordingly, absent evidence of unusual or unexpected results, no patentability can be seen in the presently claimed subject matter.

***Response to Arguments***

4. Applicant's arguments filed July 31, 2006 have been fully considered but they are not persuasive.

It is maintained that it would have been obvious to one having ordinary skill in the art to have used an ethylene vinyl acetate copolymer in combination with another polymer based on olefinically-unsaturated monomers for their expected additive effect as component A). This is because the reference clearly teaches that the crosslinkable elastomers can be used in combination of two or more. It is *prima facie* obvious to combine two materials each of which is taught by the prior art to be useful for the same purpose in order to form a third composition which is to be used for the very same purpose. The idea of combining them flows logically from their having been individually taught in the prior art. Accordingly, absent evidence of unusual or unexpected results, no patentability can be seen in the presently claimed subject matter.

Applicants argue that the amended claims exclude the water-insoluble substance B) of the references. The present claims, by virtue of the language “composition **comprising** a water-soluble matrix and water-soluble particles”, however, do not exclude the presence of additional components, for example, a dispersed phase comprising the water-insoluble substance B) of the reference. It is again noted that in one embodiment of the reference, the water-insoluble component having functional groups constitutes a dispersed phase, as opposed to a co-matrix

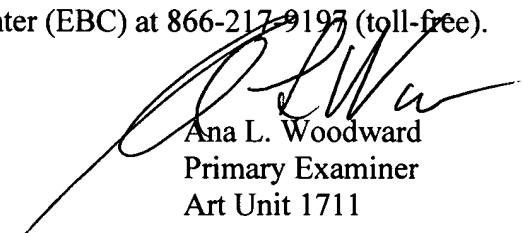
phase, i.e., *it does not form part of the matrix*. In any event, applicants' specification clearly discloses that polymers modified by functional groups, reading on the reference's component B), can be used as compatibilizing agents for the presently claimed compositions (pages 13-14).

***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ana L. Woodward whose telephone number is (571) 272-1082. The examiner can normally be reached on Monday-Friday (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on (571) 272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ana L. Woodward  
Primary Examiner  
Art Unit 1711

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